



DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 216 and 300**

**[Docket No. 220603-0130]**

**RIN 0648-BG11**

**Implementation of Provisions of the Illegal, Unreported,  
and Unregulated Fishing Enforcement Act of 2015 and the  
Ensuring Access to Pacific Fisheries Act**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a rule to implement certain provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 and the Ensuring Access to Pacific Fisheries Act, and to amend the definition of illegal, unreported, or unregulated (IUU) fishing in the regulations that implement the High Seas Driftnet Fishing Moratorium Protection Act.

**DATES:** Written comments must be received on or before *[insert date 60 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2016-0164, by any of the following methods:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<https://www.regulations.gov> and enter NOAA-NMFS-2016-0164 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

*Mail:* Submit written comments to Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of International Affairs, Trade, and Commerce and by submission to Information Collection Review (<https://www.reginfo.gov/public/do/PRAMain>).

**FOR FURTHER INFORMATION CONTACT:** Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service (phone: 301-427-8350; or email: *christopher.rogers@noaa.gov*).

**SUPPLEMENTARY INFORMATION:**

***Background***

This proposed rule would implement the Port State Measures Agreement Act of 2015 and certain other provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (IUU Fishing Act), Pub. L. 114-81 (November 15, 2015), and would implement certain provisions of the Ensuring Access to Pacific Fisheries Act (Pacific Fisheries Act), Pub. L. 114-327 (December 16, 2016). As explained below, these two Acts amended several existing statutes. Thus, authority for this rulemaking comes from those existing statutes, as amended.

This proposed rule would also amend the definition of IUU fishing in regulations that implement the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) (16 U.S.C. 1826d *et seq.*). Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Pub. L. 109-479) amended the Moratorium Protection Act to direct the Secretary of Commerce to promulgate a regulatory definition of IUU fishing. See 16 U.S.C. 1826j(e).

***Statutory Background***

On November 15, 2015, President Obama signed into law the IUU Fishing Act, which can be found at: <https://www.congress.gov/114/plaws/publ81/PLAW-114publ81.pdf>, and consists of three Titles. Title I amends several regional fishery management agreements' implementing statutes to harmonize their enforcement provisions with those found in the Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, and addresses other administrative matters. Title II provides authority to implement the Antigua Convention, which was negotiated to strengthen and replace the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. Title III provides the authority to implement the provisions of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement or PSMA) of the Food and Agriculture Organization of the United Nations. The Port State Measures Agreement has been signed and ratified by the United States and, as of February 2022, joined by 69 other Parties, including the European Union on behalf of its Member States.

On December 16, 2016, President Obama signed into law the Pacific Fisheries Act. This Act provides authority to implement the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, the Convention on the Conservation and Management of

High Seas Fishery Resources in the South Pacific Ocean, and the amendments to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries. The Pacific Fisheries Act also addresses other matters, including harmonizing amendments to the Moratorium Protection Act (16 U.S.C. 1826d-k), which are detailed below.

This proposed rule would implement only certain provisions of the IUU Fishing Act and the Pacific Fisheries Act, by: revising the regulatory penalty provisions under the Pacific Salmon Treaty Act (1985) (16 U.S.C. 3631) and the Dolphin Protection Consumer Information Act (16 U.S.C. 1385); amending the procedures for identifying and certifying nations under the Moratorium Protection Act; reducing the period of validity for vessel permits issued under the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*); and expanding the set of information required to be submitted by foreign fishing vessels requesting entry into U.S. ports as required by the Port State Measures Agreement. The proposed rule also updates a reference to subsequent subparts in the general definitions section of 50 CFR part 300, subpart A (50 CFR 300.2).

Title II of the IUU Fishing Act (implementing the Antigua Convention) has already been addressed through a separate final rule published on August 1, 2016 (81 FR 50401). Additionally, Titles I, II, III, V, and VI of the

Pacific Fisheries Act will be implemented, as needed, through separate rulemakings.

*Strengthening Fisheries Enforcement Mechanisms*

This proposed rule would implement several amendments made by the IUU Fishing Act to the fisheries enforcement mechanisms of a number of existing statutes implementing U.S. obligations to regional fisheries management organizations and other international conservation organizations, as described below. Rulemaking is needed to implement these amended enforcement provisions and to ensure their consistent application nationally. Specifically, the penalties section of the regulations implementing the Pacific Salmon Treaty Act (1985) (16 U.S.C. 3631) would be revised to reference the updated enforcement provisions of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g), described above.

In addition, this proposed rule would revise the Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1385) regulations to remove the existing paragraph describing penalties. Given that the IUU Fishing Act makes the updated enforcement and penalties provisions of the High Seas Driftnet Fishing Moratorium Protection Act (codified at 16 U.S.C. 1826g) applicable to the DPCIA, a separate penalties section for the DPCIA regulations is no longer needed.

## *Amendments to Procedures to Identify and Certify Nations*

The Moratorium Protection Act requires the Secretary of Commerce to identify and certify nations whose fishing vessels are engaged in illegal, unreported, or unregulated fishing, bycatch of protected living marine resources, or shark catch on the high seas without a regulatory program comparable to that of the U.S. See 16 U.S.C. 1826j(a), (d) and 1826k(a), (c) (setting forth identification and certification requirements) and 50 CFR 300.201-300.204 (definitions and identification, notification, and certification procedures). Such identifications and certifications are notified to Congress through a biennial report, available at

*<https://www.fisheries.noaa.gov/foreign/international-affairs/identification-iuu-fishing-activities#magnuson-stevens-reauthorization-act-biennial-reports-to-congress>*.

Nations identified in the Biennial Report receive notification as provided in 50 CFR 300.202-300.204. To facilitate analysis and report preparation, the Pacific Fisheries Act changes the due date of the biennial report to June 1 of a reporting year. While adjustment of the reporting date is a statutory provision that does not require a regulatory change, we are providing notice of this change in the preamble to this rule.

Consistent with the Pacific Fisheries Act, this proposed rule would amend the Moratorium Protection Act's

implementing regulations for identifying nations (50 CFR part 300, subpart N). Specifically, the proposed regulatory change would expand to three years the time period for which a nation's fishing activities will be considered for identification for IUU fishing (originally 2 years), for bycatch of protected living marine resources (originally 1 year), or for fishing activities that target or incidentally catch sharks in waters beyond any national jurisdiction without having adopted a regulatory program comparable to that of the United States (originally 1 year).

The proposed rule also would amend the existing procedures for certifying nations to clarify the effect of negative certification of a nation, including the duration of a negative certification, denial of port privileges, and import restrictions on fish or fish products from negatively certified nations. In addition, consistent with a statutory amendment, the proposed rule would limit the applicability of provisions for denial of port privileges and prohibition of imports only to identified nations that receive a negative certification under the Moratorium Protection Act. Currently, 50 CFR 300.205 addresses situations where a nation "does not receive a positive certification," because the Act originally provided for the assessment of sanctions on a nation if that nation received a negative certification or if a nation has not been



certified either positively or negatively in the subsequent biennial report. The Pacific Fisheries Act eliminated the option of not certifying a nation, thus existing regulations would be revised to reflect this change.

#### *IUU Fishing Definition Amendments*

This proposed rule would also amend the definition of "Illegal, unreported, or unregulated (IUU) fishing" in the regulations implementing the Moratorium Protection Act (50 CFR 300.201). Congress authorized the Secretary of Commerce to establish a definition of IUU fishing for the purposes of the Act and required the definition to include, among other elements, fishing activities that violate conservation and management measures required under international fishery management agreements to which the United States is a party. 16 U.S.C. 1826j(e).

This proposed rule would add two new elements to the regulatory definition of IUU fishing for identifications and certifications under the Act. The first proposed element would be new paragraph (6) in the definition of IUU fishing in 50 CFR 300.201, which would add fishing in waters under the jurisdiction of a nation, without the permission of that nation, or in contravention of its laws and regulations. The United States is a contracting party to a number of regional fishery management organizations (RFMOs) that have adopted IUU fishing vessel-listing procedures that presume unauthorized fishing within waters

under the jurisdiction of another nation to be IUU fishing. For example, see Recommendation 2018-08 of the International Commission for the Conservation of Atlantic Tunas (<https://www.iccat.int>) and Conservation and Management Measure 2019-07 of the Western and Central Pacific Fisheries Commission (<https://www.wcpfc.int>).

In addition, paragraph 3.1.1 of the United Nations Food and Agriculture Organization (FAO) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA IUU) includes fishing in the waters under the jurisdiction of a state without permission or in contravention of the laws of that state in its description of activities constituting IUU fishing (<https://www.fao.org/3/y1224e/Y1224E.pdf>). Consistent with the IPOA IUU, this proposed change to the IUU fishing definition could lead to identification of nations by the United States even when the unauthorized incursion is not a violation of any specific RFMO conservation measure or an RFMO has not posted any involved vessels of the identified flag state to its IUU fishing vessel list.

The proposed change to the definition of IUU fishing would allow identification of a nation under the Moratorium Protection Act for a failure to exercise effective flag state control, as evidenced by persistent and pervasive fishing activities by the nation's vessels in waters

recognized by the United States as being under the jurisdiction of another nation without the authorization of that nation or otherwise in contravention of that nation's laws. The flag nation would be considered for identification unless there has been effective resolution of such illegal fishing by the flag State, on a bilateral basis, or through a relevant international fishery management organization.

As with identifications for other aspects of IUU fishing, the process and procedures of 50 CFR 300.202(a) would be applied to consider the history, nature, circumstances, extent, duration and gravity of any unauthorized fishing in waters under the jurisdiction of a coastal nation. NMFS will also take into account any actions already taken or on-going proceedings by the United States and/or flag State to address the IUU fishing activity of concern as well as the effectiveness of such actions.

NMFS notes that the Joint Explanatory Statement to Division B of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) directs NOAA to revise existing regulations defining IUU fishing in 50 CFR 300.201 (Moratorium Protection Act regulations) to be consistent with the definition codified in section 3532(6) of Pub. L. 116-92 (Maritime Security and Fisheries Enforcement (SAFE) Act). Under section 3532(6), IUU fishing "means illegal

fishing, unreported fishing, or unregulated fishing (as such terms are defined in paragraph 3 of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing [IPOA IUU], adopted at the 24th Session of the Committee on Fisheries in Rome on March 2, 2001)."

The Joint Explanatory Statement does not amend the Moratorium Protection Act, which prescribes specific, minimum elements for the regulatory definition of IUU fishing. While the IPOA IUU generally describes activities considered illegal fishing, unreported fishing, or unregulated fishing, an operational definition of IUU fishing is needed in order to implement the identification and certification procedures of the Moratorium Protection Act. NMFS believes that the IUU fishing definition, as amended by proposed paragraph (6) in the definition in § 300.201, is consistent with the IPOA IUU and Moratorium Protection Act, and can be used to implement the Act's procedures.

The second proposed element would add paragraph (7) to the definition of IUU fishing in 50 CFR 300.201, which would amend the definition to include fishing activities in waters beyond any national jurisdiction that involve the use of forced labor. Because the Moratorium Protection Act sets forth "minimum" elements for the IUU fishing definition, NMFS has discretion to consider whether other

elements should be added. Significant concerns have been raised about the use of forced labor in the course of fishing activity on fishing vessels in international waters. As stated by NMFS on page 77 of its 2019 report to Congress, Improving International Fisheries Management (available at <https://www.fisheries.noaa.gov/foreign/international-affairs/identification-iuu-fishing-activities>), there is a growing body of evidence documenting severe abuses and exploitation on board fishing vessels. Workers on fishing vessels may be particularly vulnerable due to isolated workplaces and length of time at sea, which physically restricts workers' abilities to leave or escape abusive situations. Fisheries also frequently recruit migrant workers, who may not be protected by the flag state's domestic laws, and are therefore more vulnerable to exploitation. Further, such abuses and exploitation are known to occur in conjunction with other IUU fishing activities. These practices may include charging workers recruitment fees, confiscating and withholding workers' passports or identity documents, threats or physical violence, and using fraudulent recruitment tactics such as contract switching.

To facilitate implementation, paragraph (7) in the definition of IUU fishing in § 300.201 is focused on fishing activities "in waters beyond any national jurisdiction." This is consistent with the Moratorium

Protection Act's bycatch and shark identification provisions, 16 U.S.C. 1826k(a)(1)(A), (2)(A). The proposed rule uses the definition of "forced labor" in Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307) with a few edits: "all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer [themselves] voluntarily. For purposes of this subpart, forced labor includes forced child labor." As forced labor can include "indentured labor" and the latter term is not separately defined, the proposed rule does not include "indentured labor." In addition, one grammatical edit is noted in brackets.

As previously discussed, the Joint Explanatory Statement directs that the definition of IUU fishing be consistent with the definition codified in section 3532(6) of Pub. L. 116-92 (Maritime Security and Fisheries Enforcement (SAFE) Act). Under section 3532(6), IUU fishing "means illegal fishing, unreported fishing, or unregulated fishing (as such terms are defined in paragraph 3 of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing [IPOA IUU], adopted at the 24th Session of the Committee on Fisheries in Rome on March 2, 2001)." Under the IPOA IUU paragraph 3,

Illegal fishing refers to activities:

3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State ... in contravention of its laws and regulations; ...  
3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

The IPOA IUU does not specifically mention forced labor. However, the Maritime SAFE Act refers to "IUU fishing, including its links to forced labor and transnational organized illegal activity." 16 U.S.C. 8003(1). It also indicates that trafficking and forced labor are "other" crimes "associated" with IUU fishing. 16 U.S.C. 8013(d) (9). The Maritime SAFE Act also references the ties of IUU fishing to human trafficking, poor working conditions, and labor abuses. See *e.g.*, 16 U.S.C. 8003 (11), (12).

While the Maritime SAFE Act does not require that forced labor be included as an element of IUU fishing, the addition of paragraph (7) to the definition in § 300.21 is not inconsistent with the Maritime SAFE Act and the IPOA IUU. Specifically, the proposed addition of "forced labor" uses the established definition embodied in U.S. law and widely adopted international obligations. The definition, which comes from Section 307 of the Tariff Act of 1930, is consistent with Article 2 of the Forced Labor Convention of 1930. The 1998 ILO Declaration on Fundamental Principles and Rights at Work confirms that all ILO Members have an obligation, arising from the very fact of membership in the

organization, to respect, promote and realize, in good faith, the principles concerning fundamental labor rights. One of those principles is the elimination of forced or compulsory labor. In addition, the primary international instrument concerning human trafficking,<sup>1</sup> which has been widely ratified, provides a framework for countries to criminalize trafficking in persons in all its forms, including for the purpose of forced labor; to prevent the crime; to protect the victims; and to facilitate international cooperation. If finalized, the inclusion of forced labor in the definition of IUU fishing would apply only in the Moratorium Protection Act context and would not modify other legal authorities.

#### *Revisions to the IUU Fishing Identification Procedures*

With regard to the triggers for identification, the Moratorium Protection Act provides that, for actions of its fishing vessels, a nation is identified for IUU fishing if it violates measures required under an international

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<sup>1</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Protocol), defines trafficking in persons as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The Protocol provides that exploitation includes forced labor or services. See also the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7102 (defining "severe forms of trafficking in persons" to include "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery"); see also 18 U.S.C. 1589 (Forced Labor) (punishing whoever "knowingly provides or obtains the labor or services of a person" by means of force, threats of force, threats of serious harm, or other means set forth in section 1589).



fishery management organization and the violations undermine the effectiveness of such measures, or the nation fails to effectively address or regulate IUU fishing in areas where no international fishery management organization exists with a mandate to regulate the fishing activity in question. 16 U.S.C. 1826j(a). NOAA is committed to engaging with such organizations to take any appropriate actions on forced labor issues. But given that no such organization has adopted a binding forced labor measure yet, proposed § 300.202(a)(1)(iii) adds a new basis for identifying a nation for its fishing vessels' IUU fishing actions "[a]s defined under paragraph (7) of the definition of IUU fishing in § 300.201."

As with identifications for other aspects of IUU fishing, NMFS would apply the process and considerations under 50 CFR 300.202(a). Given the expertise of other Departments and agencies on labor issues, the proposed rule adds that NMFS may consider relevant documentation, information, and advice from other Departments and agencies during the identification and certification process and may engage with other Departments and agencies during the consultation process with identified nations ((50 CFR 300.202(a)(3), (c), and (d)(2))).

NMFS seeks comment on the proposed addition of paragraph (7) to the definition of IUU fishing in § 300.201, the related, new basis for identification of

nations, and other conforming provisions; on whether other alternatives would be more appropriate or preferable; on which factors should be considered when identifying and certifying nations that are engaged in fishing activities that involve the use of forced labor; and on any other considerations concerning the implementation of the proposed measures to address forced labor under the Moratorium Protection Act.

NMFS also proposes a revision to the identification criteria for IUU fishing (50 CFR 300.202) to conform with a statutory amendment to the Moratorium Protection Act. Under the revised identification criteria, NMFS could also identify a nation for actions or inactions that undermine a conservation measure of an RFMO to which the United States is a party even in situations where there is no direct evidence of activities by specific vessels. For example, identification could occur when a nation does not report catch and effort data as required by the RFMO to assess stocks or monitor catch allocations. NMFS could also identify a nation if its vessels are engaged in activities defined as IUU fishing in areas where no RFMO has been established and therefore no specific conservation measures would pertain.

New § 300.202(a)(3) contains existing regulatory text that is proposed to be reordered and, as explained above, adds a reference to possible consultation with other

relevant Departments and agencies regarding information on forced labor in specific fisheries including, but not limited to, information provided under section 131 of the Trafficking Victims Protection Reauthorization Act (TVPRA) and Withhold Release Orders and Findings issued pursuant to section 307 of the Tariff Act of 1930. This paragraph (a)(3) provides discretion to examine the full context of the IUU fishing activity and relevant mitigating circumstances when deciding to identify a nation. These discretionary provisions would apply to both paragraph (a)(1) as proposed to be revised and paragraph (a)(2) as proposed to be added. Under new paragraph (a)(2), a nation could be identified on the basis of certain actions/inactions as a flag state. NMFS would not need to have detailed information about the actions of specific vessels when applying the provisions of proposed paragraph (a)(2). For example, failure to implement required monitoring, control and surveillance measures for its fleet or report annual catch data to the relevant RFMO could lead to an identification under paragraph (a)(2).

#### *Definition of "Nation"*

This proposed rule would also add a regulatory definition for "nation" to address a corresponding provision of the IUU Fishing Act. Consistent with the amended statutory text, this provision specifies that in addition to nations, an entity having the competency to

enter into international fisheries management agreements could be identified as a nation under the Moratorium Protection Act process.

#### *Consolidation of Alternative Procedures Provisions*

Proposed revisions to § 300.207 consolidate text in existing §§ 300.207 (IUU fishing), 300.208 (bycatch) and 300.209 (shark catch) on alternative procedures for products not subject to trade restrictions under circumstances of a negative certification of a nation. Under the Moratorium Protection Act and current procedures, the Secretary of Commerce may make a determination that a vessel has not engaged in IUU fishing under an international fishery management agreement to which the United States is a party. The proposed rule would delete the reference to an agreement, given the proposed edits related to forced labor and interest in ensuring that trade restrictions are applied fairly and consistently.

#### *Reformatting Revisions*

Finally, this proposed rule would also renumber several provisions of the Moratorium Protection Act's implementing regulations to fix erroneous formatting in the existing regulatory text.

#### *Validity Period for High Seas Fishing Compliance Act*

##### *Permits*

This proposed rule would revise the High Seas Fishing Compliance Act (HSFCA) (16 U.S.C. 5501 *et seq.*) regulations

to indicate that a high seas permit becomes void upon the expiration, revocation, or suspension of any other permit or authorization also required for the conduct of the particular high seas fishing activity (see e.g., 50 CFR 635.4, requiring permits for Atlantic Highly Migratory Species Fisheries; 50 CFR 660.707 requiring permits for West Coast Fisheries for Highly Migratory Species; 50 CFR 665.13 requiring permits to fish for Western Pacific Pelagic Fisheries).

In addition, this proposed rule would clarify that a high seas permit will no longer be issued for a period of validity of 5 years as the IUU Fishing Act eliminated this requirement in amending the HSFCA. NMFS instead proposes to set the length of validity of these high seas permits to 1 year to ensure that vessels are compliant with monitoring, reporting, and record-keeping requirements through an annual review upon receipt of a renewal application. Additionally, the annual review will ensure that any underlying permits necessary to obtain an HSFCA permit for a specific fishery, many of which require annual renewal, are concurrently valid. NMFS notes that the proposed regulatory text does not specify a 1 year period, but states that HSFCA permits are valid from their dates of issuance to dates of expiration. This approach provides NMFS with flexibility to consider changing a HSFCA permit's validity period, in light of changes to the validity

periods of the underlying permits, if any, needed to authorize the high seas fishing activity.

The HSFCA applies, and requires a permit, for a vessel of the United States (or subject to the jurisdiction of the United States) used or intended for use on the high seas; for the purpose of the commercial exploitation of living marine resources; and as a harvesting vessel, as a mother ship, or as any other support vessel directly engaged in a fishing operation. 16 U.S.C. 5502(4). Under the US implementing regulations for several RFMO conventions, permits are required throughout the convention area whether fishing in the U.S. Exclusive Economic Zone (EEZ) or beyond. The statutory requirements overlap, thus it is appropriate to coordinate permits for consistent periods of validity. The overlapping fisheries are identified in the regulations at 50 CFR 300.334(a).

Because annual renewal would reduce the period of validity for high seas permits from the existing five years, the proposed rule requires modifications to an existing information collection subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (OMB Control Number 0648-0304). As explained below, NMFS has revised the reporting burden associated with renewal of these permits. In addition, NMFS has implemented an automated permitting system for initial

permits and renewal permits, so no additional staff would be needed to accomplish annual renewals.

NMFS requests comment on the proposal to renew HSFCA vessel permits on an annual basis. In addition, should the proposed action be implemented, NMFS requests comment on the appropriate transition to annual permits. Options could include converting HSFCA permits as they expire over the next few years, recalling all current permits and reissuing them for a one-year period of validity, or re-issuing HSFCA vessel permits together with any underlying permits held by the vessel according to the same period of validity for those other permits. NMFS will also consider other transition options submitted during the comment period on this proposed rule.

#### Transshipment and Catch on the High Seas

Sections 300.339 and 300.341 of 50 CFR part 300, subpart R, concerning transshipment and catch by U.S.-flagged vessels on the high seas, are proposed to be revised for formatting purposes only. The procedures for notification and reporting of high seas transshipment, and for reporting catch, that are currently in effect would not be altered by these formatting changes.

#### Implementation of the Port State Measures Agreement

This proposed rule would implement the Port State Measures Agreement, as authorized by Title III of the IUU Fishing Act. The main purpose of the Port State Measures

Agreement, which can be found at <https://www.fao.org/3/a-i5469t.pdf>, is to prevent, deter, and eliminate IUU fishing through the implementation of minimum standards for effective port state measures. The Port State Measures Agreement is intended to enhance regional and international cooperation and the ability of nations to detect and intercept products of IUU fishing before they enter into national and international markets. NOAA proposes to incorporate the PSMA by reference.

The regulations authorizing actions against IUU fishing vessels (50 CFR part 300, subpart P) would be amended to incorporate certain definitions included in the IUU Fishing Act. In particular, a definition of "IUU fishing" would be added to reflect the description of IUU fishing included in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the FAO, which was incorporated by reference into the Port State Measures Agreement. This definition would establish the criteria for denial of port access or port privileges to a vessel known to be engaged in IUU fishing or for which there are reasonable grounds to believe it to be engaged in IUU fishing. It is not inconsistent with, and is distinct from, the definition of IUU fishing as laid out in 50 CFR part 300, subpart N, which serves as the basis to identify nations for engaging in IUU fishing under the Moratorium Protection Act.



NOAA likewise proposes to incorporate by reference FAO's 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which can found at <https://www.fao.org/3/y1224e/Y1224E.pdf>. That Plan of Action addresses the nature and scope of IUU fishing and adopts objectives and principles to prevent, deter, and eliminate IUU Fishing. In particular, NMFS proposes to incorporate by reference the description of activities deemed to constitute IUU fishing and apply that description for the purposes of screening foreign fishing vessels seeking entry to U.S. ports.

In current subpart P, the regulations address U.S. obligations to RFMOs that have included vessels on IUU fishing vessel lists. This proposed rule would add to subpart P those obligations of the U.S. as a party to PSMA. RFMOs decide how to define IUU fishing for the purposes of listing IUU fishing vessels. The addition of PSMA obligations to these regulations expands U.S. requirements to take action against vessels engaged in IUU fishing, or for which there are reasonable grounds to believe it has been engaged, even if the vessels were not previously posted to RFMO IUU fishing vessel lists. The IPOA IUU description of IUU fishing activities would be used as a basis to take action against vessels not listed by an RFMO.

The respective RFMO definitions of IUU fishing would continue to be used to take obligatory action against RFMO

listed vessels. The subpart N definition of IUU fishing would be used as a basis for action to identify and negatively certify a nation under the Moratorium Protection Act, and port access restrictions would pertain. The subpart P definition would be used as a basis for action under PSMA obligations. In some instances, there could be more than one statutory authority that could lead to a denial of port access and/or port privileges. The specific actions of the vessel and the pertinent authority for the situation would determine how port access would be denied or granted.

Ports to which foreign vessels may request entry pursuant to the PSMA, include those Customs Ports of Entry listed in 19 CFR 101.3 and those specified under any existing international fisheries agreement. NMFS interprets the latter as referring to any such agreements that are in force, not just those existing when the IUU Fishing Act was enacted in 2015. The regulatory provisions for vessel inspection under subpart P would apply to either a situation where an RFMO has placed the vessel on its IUU fishing vessel list (U.S. obligation to the RFMO) or a situation where the vessel is not listed by an RFMO but is suspected of having engaged in IUU fishing as that term is defined in subpart P (U.S. obligation under the PSMA). Vessel inspections will be carried out as necessary to meet

all U.S. obligations that pertain to the circumstances applicable to the vessel.

In addition, the proposed action would expand the set of information required to be submitted by foreign vessels when such vessels request entry into U.S. ports. The term "vessel" is defined by the Act at 16 U.S.C. 7402(8) as "any vessel, ship of another type, or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities". The regulations would also specify the criteria under which port entry and access to port privileges is authorized or denied, and procedures for communicating the decisions regarding port entry and access to port privileges.

U.S. Coast Guard regulations currently require foreign-flagged vessels to give advance notice prior to arrival at a U.S. port or place of destination, as defined in 33 CFR 160.202. In accordance with 33 CFR 160.206, vessels are currently required to report electronically, through the U.S. Coast Guard's electronic Notice of Arrival and Departure (eNOAD) system. Under current U.S. Coast Guard regulations, information to be submitted includes the vessel name, voyage number, cargo on board, crewmembers, and other related information. This information must be reported to the Coast Guard's National Vessel Movement Center (NVMC) at least 96 hours before entering the port or

place of destination or, if an exemption applies, in accordance with the timeframe stipulated at 33 CFR 160.212.

Annex A of the Port State Measures Agreement is titled Information to be Provided in Advance by Vessels Requesting Port Entry. The information specified in Annex A must be collected from foreign vessels when they are bound for a U.S. port. Annex A information includes: specific vessel information, including external and RFMO vessel identification numbers, the type of vessel and its dimensions, the type of Vessel Monitoring System aboard the vessel, details about relevant fishing and transshipment authorizations for the vessel, as well as a description of the total catch onboard the vessel and the catch to be offloaded at the requested port of entry.

Therefore, the proposed rule would require vessel operators to submit this additional information through the eNOAD system and outlines expanded requirements with respect to the Notice of Arrival process for vessels bound for U.S. ports listed in 19 CFR 101.3. Supplemental submission may be needed if the PSMA Annex A information is incomplete. Vessel operators submitting a notice of arrival are already familiar with and using the eNOAD system. It is anticipated that only a few hundred foreign fishing vessels will be affected annually by the additional information requirement. No additional operators on board

foreign fishing vessels are likely needed to collect and transmit this information.

This would be a new information collection subject to approval by OMB under the Paperwork Reduction Act (OMB Control Number to be assigned). NMFS has coordinated closely with the U.S. Coast Guard to ensure that these proposed regulations would be compatible with existing U.S. Coast Guard regulations and operations.

Once this new information collection is approved, compliance guidance documents outlining the requirements of the information collection, as well as the revised process of requesting port entry, will be made available through the NMFS Office of Law Enforcement and the U.S. Coast Guard (USCG). Should the proposed action be implemented, NMFS will provide for a period of delayed effectiveness that will allow USCG time for software development, testing and deployment, and to allow shippers and vessel operators the time needed to become familiar with the new information requirements and notification procedures. NMFS requests comment on the additional time needed for operators of foreign fishing vessels before the new reporting requirement becomes mandatory for acceptance of a notice of arrival.

#### **Classification**

This rulemaking is published under the authority of the Illegal, Unreported, and Unregulated Fishing

Enforcement Act of 2015, Pub. L. 114-81 (November 15, 2015); the Ensuring Access to Pacific Fisheries Act, Pub.L. 114-327 (December 16, 2016); the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826d-k; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 5501 *et seq.*; Antarctic Marine Living Resource Conservation Act of 1984, 16 U.S.C. 2431 *et seq.*; 31 U.S.C. 9701 *et seq.*; the High Seas Driftnet Fishing Enforcement Act, 16 U.S.C. 1826a-1826c; the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*; the Northwest Atlantic Fisheries Convention Act, 16 U.S.C. 5601 *et seq.*; and the Pacific Salmon Treaty Act, 16 U.S.C. 3631 *et seq.*; the Tunas Convention Act, 16 U.S.C. 951 *et seq.*, the Magnuson-Stevens Fishery Management and Conservation Act, 16 U.S.C. 1801 *et seq.*; and the High Seas Fishing Compliance Act, 16 U.S.C. 5501 *et seq.* The NMFS Assistant Administrator has determined that this proposed rule is consistent with the above referenced statutes and other applicable law, subject to further consideration after public comment.

This rulemaking has been determined to be significant for the purposes of Executive Order (E.O.) 12866. Details on the estimated costs and potential benefits of this proposed rule can be found in the associated Regulatory Impact Review. NMFS requests comments on the benefit-cost analysis, including whether the most likely net impacts are

reasonable, and solicits additional information to better characterize the indirect effects of this rulemaking on curtailing IUU fishing activity.

As described in the Background section above, certain provisions of two different Acts would be implemented through this rulemaking: the IUU Fishing Act (Pub. L. 114-81), implementation of which includes a proposed new information-collection; and the Pacific Fisheries Act (Pub. L. 114-327), implementation of which includes a proposed revision to an existing information-collection.

#### *Regulatory Flexibility Act*

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to describe the economic impact that this proposed rule would have on small entities in accordance with section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for, this proposed rule are contained in the **SUMMARY** section of the preamble. A copy of the full analysis is available on the Federal e-Rulemaking Portal (see **ADDRESSES**). A summary of the IRFA follows.

The proposed action and new information collection under the IUU Fishing Act would directly affect approximately 300 foreign fishing vessels and foreign vessels engaged in fishing-related activities that seek access to U.S. ports. The foreign fishing vessel's notice

of arrival, including the PSMA Annex A information, would identify the vessel's flag State and the fishing activities authorized by the flag State. If NMFS has concerns about fraudulent representations, the reported information can be verified by the flag State. If NMFS has concerns about the RFMO compliance status of flag States, a vessel allowed in port could be subject to inspection. The existing notice of arrival process would not provide sufficient information regarding fishing authorizations by the flag State. If the PSMA Annex A information is not collected via eNOAD, NMFS would have to obtain that information via other sources.

The requirement for PSMA Annex A information would indirectly affect some U.S. suppliers of port services should vessels be denied entry. However, these suppliers of port services would not be subject to any of the requirements of this rulemaking and the number of vessels denied entry or denied port services under this proposed rule is estimated to be small. While there may be some minor indirect impacts on suppliers due to port denials, such impacts on small entities to which the rulemaking would not apply are not analyzed under the IRFA.

For the potentially affected foreign vessels, only a small percentage would likely receive a Denial of Entry Notice. Because foreign vessels engaged in fishing-related activities outside of U.S. waters are not regulated by NMFS or any other U.S. Federal or State agency, information is



not available to enable an estimate of the number of those vessels that might be expected to receive a Denial of Entry Notice. However, otherwise admissible foreign fishing vessels that are unable to meet the notice of arrival information requirements are unlikely to seek entry into U.S. ports. Those eligible foreign fishing vessels that can meet the notice of arrival requirements, including PSMA Annex A information, are unlikely to be denied port access unless they submit obviously fraudulent or suspicious information.

With respect to the Pacific Fisheries Act, this proposed rule includes regulatory provisions to implement Title IV of the Act, which would make conforming amendments to regulations implementing the statutes amended by the Act, specifically amendments to the High Seas Driftnet Fishing Moratorium Protection Act. Titles I, II, III, V, and VI of the Pacific Fisheries Act have been or will be implemented, as needed, through separate rulemakings.

As discussed above, the Pacific Fisheries Act removed the requirement that a high seas fishing permit be issued for a period of validity of five years. Instead, NMFS proposes that the validity of the high seas permit be limited to one year.

A 1 year period is more appropriate than the current 5 year period in order to ensure that high seas fishing vessels are compliant with all other relevant requirements

and that underlying permits necessary to participate in the fisheries authorized by an HSFCA permit are concurrently valid. The objective of the change is to coordinate issuance and renewal of the HSFCA permit with other required permits for the particular fishery. NMFS examined the permit programs for those other fisheries and determined that annual renewal of HSFCA permits would coincide with renewal of other permits required to participate in the fisheries when those vessels operate on the high seas.

The HSFCA permit is required of, and issued to, U.S. flag vessels fishing on the high seas, not to foreign fishing vessels. U.S. vessels are not subject to the PSMA requirements for entry into U.S. ports, only foreign fishing vessels. There would be no supply chain impacts to the proposed annual renewal of HSFCA permits, because the number of permits is either not limited for some fisheries or limited by other pre-existing regulations for those fisheries.

This change to annual permit renewal would have potential impacts to small entities. Therefore, the analysis focuses primarily on the effects of the change of the permit frequency to permit holders.

Small entities include "small businesses," "small organizations," and "small governmental jurisdictions." The Small Business Administration (SBA) has established size

standards for all major industry sectors in the U.S. including commercial seafood processors (North American Industry Classification System (NAICS) code 311710). A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 750 employees for all its affiliated operations worldwide. A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

The proposed 1 year permit renewal would apply to owners and operators of U.S. permitted fishing vessels operating on the high seas, including harvesting vessels operating on the high seas, refrigerated cargo vessels, or other vessels used to support fishing. As of March 2022, there are 347 registered U.S. vessels permitted to fish on the high seas. The majority of these permitted vessels are longliners, trollers, purse seiners, and pole and line vessels. There is also a small percentage of gillnetting, squid jigging, line fishing, multipurpose, and trawl vessels. A small number of the affected entities are freezer vessels involved in seafood processing.

In the IRFA, an individual permitted vessel was used as the proxy for each business entity. Although a single business entity may own multiple vessels, NMFS does not have a reliable means at this time to track ownership of multiple vessels to a single business entity. For this reason, an assumption that each vessel is owned by a unique business entity may overestimate the number of small businesses affected by the proposed rule.

The NMFS annual report, Fisheries of the United States, for 2019 provides an aggregate total revenue for the active vessels (permit holders reporting catch) listed as fishing on "High Seas or off Foreign Shores" of \$394 million in 2018 and and \$347 million in 2019. Using these revenue figures and the current number of permitted

vessels, average annual revenues for an individual U.S. high seas vessel over the 2 year period is estimated at \$1.1 million. Based on the best available financial information about the affected fishing vessels (*i.e.*, permit holders), NMFS believes that all the affected fish harvesting businesses would be small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11 million. Also, this sector has an employee-based size standard different from other sectors. A size standard of less than 750 employees would classify these business as small. Based on available information on freezer vessels, NMFS believes the entities would have fewer than 750 employees and therefore, would be considered small entities as well.

If promulgated, the proposed action would require entities to renew the permit annually, increasing the cost over the current requirement of a renewal only every 5 years. NMFS reevaluated the cost of the application process under the annual renewal cycle and due to automated renewal procedures recently implemented for this program. As a result of automation, NMFS lowered the permit fee from \$129.00 to \$56.00 for each application/renewal. While the automation represents a decrease for each application, the proposed change from 5-year renewal to annual renewals would result in an increase in permitting fees from an

average of \$11.20 per year to \$56.00 per year. The HSFCA authorizes the Secretary of Commerce to retain permit fees for the administration of the program and such funds remain available until expended. Collected fees have been used for development, operations and maintenance of the National Permits System including enhancements to automate issuance of HSFCA vessel permits.

NMFS has estimated the burden and cost associated with the information collection that would be imposed on the entities. NMFS estimates that the total public burden for the proposed information collection and fee will apply to all permitted entities that would have to comply with the changes in permit validity as part of the proposed regulation. These estimates include the time required to review the instructions and update any information from the previous year that may have changed (e.g., upload a new picture of vessel) and pay the associated permit fee via the U.S. Treasury financial management system ([www.pay.gov](http://www.pay.gov)). The detailed analysis is provided in the request to OMB for approval of revisions to the information collection under Control Number 0648-0304.

The labor burden estimates of the proposed action were based on a permit holder's hours of activity required to comply with the proposed regulation to require an annual permit renewal application and fee, rather than the current five-year renewal. Over 5 years, this equates to

completion of four additional permit applications and payment of the application processing fee each year. NMFS previously estimated one-half hour to complete the paper application form based on the number of required data elements and the need to mail the form. With the ability to apply for new permits and renew permits online, previously recorded data elements are pre-populated in the system, thus reducing data entry time. Because the annual renewal process is automated and available online, NMFS has reduced its estimate of the average time burden by 50 percent from 0.5 hours per application to 0.25 hours. For the purpose of burden analysis, NMFS assumed that an upper bound of 400 vessels would apply for or maintain HSFCA permits. Given the reduced time per application in the automated environment (15 minutes), NMFS estimates that the total burden to all 400 permit holders for the information collection would require an additional 80 labor hours annually to comply with the proposed regulation compared to current regulation (*i.e.*, each vessel owner completing four additional permit applications over a 5 year period).

NMFS assumes the administrative burden to complete the permit is the same for all entities (*i.e.*, permit holders), regardless of whether the entity harvests or processes seafood. NMFS estimated the labor cost of \$5.28 per application using the Bureau of Labor and Statistics 2021 mean hourly wage for Bookkeeping, Accounting, and Auditing

Clerks of \$21.10 and a mean time of 15 minutes per application/renewal. There is no additional recordkeeping or reporting requirements associated with the proposed annual permit renewal. There is no additional capital or operational and maintenance cost associated with the proposed regulation. If promulgated, the total cost (processing fee plus application process labor) per entity is estimated to be \$61.28 per year (\$24,512 for an estimated 400 permit holders). This represents an insignificant fraction of the average revenue for the high seas fishing permit holders who actively engaged in fishing in 2018 and 2019.

The proposed action in this rule does not limit an entity's ability to harvest or process fish and, therefore, would not impose a significant adverse impact on an entity's profitability. All entities are expected to be able to absorb the cost associated with the proposed action as part of their normal cost of operations. Therefore, based on the results of the analysis and all available information, if promulgated, NMFS does not anticipate that this proposed action would impose significant adverse or long-term economic impacts on a substantial number of small entities.

Relative to this proposed regulation, no duplicative, overlapping, or conflicting Federal rules have been identified. The annual renewal of HSFCA permits would not



require changes to observer deployment under the other applicable authorities for regulating high seas fisheries (e.g., Atlantic Highly Migratory Species, Western Pacific Pelagic Fisheries, and Pacific Highly Migratory Species.) Therefore, annual renewal under HSFCA would not affect the schedule for dockside safety exams necessary for observer deployment.

In addition to analyzing the proposed action, NMFS considered and rejected a no-action alternative, whereby NMFS would leave the length of validity of the permit at 5 years. The no-action alternative to the proposed rule would impose the least burden or economic impact on small entities, but it does not allow NMFS the ability to best fulfill its obligations to monitor and control its fishing vessels operating in areas beyond any national jurisdiction.

Although NMFS did consider other lengths of validity for this permit (*i.e.*, 2 or 3 years), the proposed annual permit renewal is the preferred alternative because it will synchronize renewals with the underlying fisheries permits that each high seas permit holder must also carry. These underlying permits are required to operate the vessel on the high seas for the specifically authorized fisheries and these other permits must be renewed annually. Issuing a vessel permit under HSFCA authority for a time period inconsistent with another required permit can lead to

confusion about the actual fishing authorization. In addition, as discussed above, it will also provide the United States with a better ability to monitor and control its high seas fishing fleet by ensuring that any delinquent reports are submitted at the time of initial permit application or annual renewal.

#### *Paperwork Reduction Act*

There are two collection-of-information requirements in this proposed rule that are subject to OMB review and approval under the Paperwork Reduction Act. The first is a new collection-of-information that would be established to comply with the United States' obligations under the Port State Measures Agreement. This collection-of-information was submitted to OMB for approval. The proposed collection-of-information would apply to foreign vessels engaged in fishing activities that are also seeking access to U.S. ports. The reporting burden would apply only to the personnel aboard the foreign vessel who file the eNOAD report. USCG will process the information for its purposes (e.g., Ports and Waterways Safety Act) while NMFS will process the Annex A information to determine if the vessel is listed by RFMOs or is otherwise believed to have engaged in IUU fishing.

The new collection-of-information burden, as proposed under this rule, is estimated to be an increase of 0.17 hours per submission over the normal eNOAD filing already

required of foreign vessels calling on U.S. ports. In 2017, the U.S. Coast Guard received a total of 183,582 vessel Notice of Arrival submissions, 675 of which were classified as fishing vessels (defined under the Port State Measures Agreement as "any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing-related activities.") Of these fishing vessel submissions, 217 were from foreign-flagged vessels. For the purpose of estimating reporting burden, NMFS is assuming that each submission is made by an individual vessel, but this would be an overestimate if some submissions were made by the same vessel.

NMFS anticipates that neither U.S. entities nor foreign entities would be significantly affected by this action because it does not pose entirely new burdens with regard to the collection and submission of information necessary to approve port access and/or port services. Further, many of the data elements to be submitted electronically through this collection-of-information to grant port access are, to some extent, either already collected under the existing U.S. Coast Guard Notice of Arrival procedures, collected pursuant to national or international trade tracking or catch documentation requirements, or collected in support of third-party certification schemes voluntarily adopted by the trade.

The second collection-of-information proposed in this rulemaking revises the existing collection-of-information for High Seas Fishing Compliance Act permitting (OMB Control Number 0648-0304).

This information collection is revised to reduce the period of validity for high seas permits from 5 years to 1 year. The collection-of-information burden for the permit requirement proposed by NMFS under the discretionary authority afforded by the Pacific Fisheries Act was estimated with respect to the annual renewal of high seas permits. The revised burden to all permit applicants is estimated to be an increase of 80 hours per year. This estimation is based on 400 permits renewed annually rather than once every 5 years. However, as of March 2022, there are only 347 active HSFCA permits that have been issued. Thus, the use of 400 vessels in estimating the reporting burden represents an upper bound.

The information collection requirement under this proposed rule does not duplicate or conflict with such requirements under any other Federal rules. Potential overlap with other reporting requirements has been taken into account to avoid collecting data more than once.

Send comments on the burden estimates or any other aspects of the new and revised collections of information to the Office of International Affairs, Trade, and Commerce at the **ADDRESSES** above, and by submission to Information

## Collection Review

(<https://www.reginfo.gov/public/do/PRAMain>).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

### **List of Subjects**

#### *50 CFR Part 216*

Administrative practice and procedure, Exports, Fish, Imports, Indians, Labeling, Marine mammals.

#### *50 CFR Part 300*

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Incorporation by reference, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: June 27, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory  
Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 216 and 300 as follows:

**PART 216 – REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

1. The authority for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

**§ 216.24 [Amended]**

2. In § 216.24, remove and reserve paragraph (g).

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

3. The authority for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

**Subpart A – General**

4. The authority for part 300, subpart A, continues to read as follows:

**Authority:** 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

5. In § 300.2, revise the introductory text to read as follows:

**§ 300.2 Definitions.**

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through R of

this part, the terms used in this part have the following meanings, unless defined otherwise in the respective subpart:

\* \* \* \* \*

6. Add § 300.9 to read as follows:

**§ 300.9 Incorporation by reference.**

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the National Oceanic and Atmospheric Administration (NOAA) and at the National Archives and Records Administration (NARA). Contact NOAA at: the National Marine Fisheries Service (NMFS), Office of International Affairs, Trade, and Commerce, 1315 East-West Highway, Silver Spring, MD 20910; phone (301)427 8350; website: <https://www.fisheries.noaa.gov/about/office-international-affairs-trade-and-commerce>. For information on the availability of this material at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html). The material may be obtained from the following source:

(a) *Food and Agriculture Organization of the United Nations (FAO)*. Viale delle Terme di Caracalla, 00153 Rome, Italy; phone: (+39) 06 57051; email: [FAO-HQ@fao.org](mailto:FAO-HQ@fao.org); website: [www.fao.org/publications/](http://www.fao.org/publications/).

(1) Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement), Revised edition, copyright 2016; IBR approved for §§ 300.300(c); 300.304(a) and (b); 300.306(e).

(2) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (International Plan of Action), published 2001; IBR approved for § 300.301.

(b) [Reserved]

**Subpart F - Fraser River Sockeye and Pink Salmon Fisheries**

7. The authority for part 300, subpart F, continues to read as follows:

**Authority:** Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

8. Revise § 300.96 to read as follows:

**§ 300.96 Penalties.**

Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures set forth in section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).



## **Subpart N - Identification and Certification of Nations**

9. The authority for part 300, subpart N, continues to read as follows:

**Authority:** 16 U.S.C. 1826d *et seq.*

10. In § 300.201, add paragraphs (6) and (7) to the definition of "Illegal, unreported, or unregulated (IUU) fishing" and the definition of "Nation", in alphabetical order, to read as follows:

### **§ 300.201 Definitions.**

\* \* \* \* \*

*Illegal, unreported, or unregulated (IUU) fishing* \* \*

\*

(6) Failure to exercise effective flag State control as evidenced by persistent and pervasive fishing activities by the nation's vessels in waters recognized by the United States as being under the jurisdiction of another nation without the authorization of that nation or otherwise in contravention of that nation's laws, unless there has been effective resolution of such illegal fishing by the flag State, on a bilateral basis, or through a relevant international fishery management organization.

(7) Fishing activities in waters beyond any national jurisdiction that involve the use of forced labor, which shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the person does not offer

themselves voluntarily. For purposes of this subpart, forced labor includes forced child labor.

\* \* \* \* \*

*Nation* means a country other than the United States, or other entity that has competency to enter into international fisheries management agreements.

\* \* \* \* \*

11. In § 300.202, revise paragraphs (a), (c), and (d) to read as follows:

**§ 300.202 Identification and certification of nations engaged in illegal, unreported, or unregulated fishing activities.**

(a) *Procedures to identify nations for IUU fishing--*

(1) *Identification for actions of fishing vessels.* Based on a cumulative compilation and analysis of data collected and provided by international fishery management organizations, other nations, non-governmental and intergovernmental organizations, and Federal, State, and other governmental agencies, NMFS will identify, and list in the biennial report to Congress, a nation if any fishing vessel of that nation is engaged, or has been engaged at any point during the preceding three years, in illegal, unreported, or unregulated fishing--

(i) That undermines the effectiveness of measures required by an international fishery management organization, taking into account whether the relevant

international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

(ii) Where no international fishery management organization exists with a mandate to regulate the fishing activity in question; or

(iii) As defined under paragraph (7) of the definition of IUU fishing in § 300.201.

(2) *Identification for actions of a nation.* Taking into account the factors described under paragraph (a)(1) of this section when making a report to Congress, NMFS will also identify, and list in such report, a nation—

(i) If it is violating, or has violated at any point during the preceding three years, conservation and management measures required under an international fishery management organization to which the United States is a party and the violations undermine the effectiveness of such measures; or

(ii) If it is failing, or has failed in the preceding three-year period, to effectively address or regulate illegal, unreported, or unregulated fishing in areas where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

(3) *Considerations when making identifications.* When determining whether to identify a nation for IUU fishing, NMFS will take into account all relevant matters, including but not limited to the history, nature, circumstances, extent, duration, and gravity of the IUU fishing in question, and any measures that the nation has implemented to address the IUU fishing. NMFS will also take into account whether an international fishery management organization exists with a mandate to regulate the fishery in which the IUU fishing in question takes place. If such an organization exists, NMFS will consider whether the relevant international fishery management organization has adopted measures that are effective at addressing the IUU fishing in question and, if the nation whose fishing vessel(s) are engaged, or have been engaged, in IUU fishing is a party to, or maintains cooperating status with, the organization. NMFS will also take into account any actions taken or on-going proceedings by the United States and/or flag State to address the IUU fishing of concern as well as the effectiveness of such actions. With regard to making identifications under paragraph (7) of the definition of IUU fishing in § 300.201, NMFS may additionally consider any pertinent documentation provided by other relevant Departments and agencies, including, but not limited to, information provided under section 131 of the Trafficking Victims Protection Reauthorization Act (TVPRA); Withhold

Release Orders and Findings issued pursuant to section 307 of the Tariff Act of 1930; and other information on the history, nature, circumstances, extent, duration, and gravity of the activity in question, and any measures that the nation has implemented to address that activity.

\* \* \* \* \*

(c) *Consultation with nations identified under paragraph (a) of this section.* Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in cooperation with the Secretary of State, will initiate consultations with nations that have been identified in the biennial report for the purpose of encouraging such nations to take appropriate corrective action with respect to the IUU fishing activities described in the biennial report. The Secretary of Commerce may engage with other Departments and agencies when initiating consultations with nations identified under paragraph (7) of the definition of IUU fishing in § 300.201 and as appropriate throughout the consultation process.

(d) *Procedures to certify nations identified under paragraph (a) of this section.* Each nation that is identified under paragraph (a) of this section shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. A positive

certification indicates that a nation has taken appropriate corrective action to address the activity described in the biennial report. A negative certification indicates that a nation has not taken appropriate corrective action.

(1) The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that such nation has taken appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account the following:

(i) Whether the government of the nation identified pursuant to paragraph (a) of this section has provided evidence documenting that it has taken corrective action to address the IUU fishing activity described in the biennial report;

(ii) Whether the relevant international fishery management organization has adopted and, if applicable, the identified member nation has implemented and is enforcing, measures to effectively address the IUU fishing activity of the identified nation's fishing vessels described in the biennial report;

(iii) Whether the United States has taken enforcement action to effectively address the IUU fishing activity of the identified nation described in the biennial report; and

(iv) Whether the identified nation has cooperated in any action taken by the United States to address the IUU fishing activity described in the biennial report.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations and an opportunity to support and/or refute the preliminary determinations and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations. The Secretary may consider advice or information provided by other relevant Departments and agencies in making its preliminary and formal certification determinations for identifications made under paragraph (7) of the definition of IUU fishing in § 300.201.

12. Revise § 300.203 to read as follows:

**§ 300.203 Identification and certification of nations engaged in bycatch of protected living marine resources.**

(a) *Criteria for identification.* NMFS will identify and list, in the biennial report to Congress, nations—

(1) Whose fishing vessel(s) are engaged, or have been engaged during the preceding three years prior to publication of the biennial report to Congress, in fishing activities or practices either in waters beyond any

national jurisdiction that result in bycatch of a PLMR, or in waters beyond the U.S. EEZ that result in bycatch of a PLMR that is shared by the United States;

(2) If the nation is a party to or maintains cooperating status with the relevant international organization with jurisdiction over the conservation and protection of the relevant PLMRs, or a relevant international or regional fishery organization, and the organization has not adopted measures to effectively end or reduce bycatch of such species; and

(3) The nation has not implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements, taking into account different conditions that could bear on the feasibility and efficacy of comparable measures.

(b) *Considerations when making identifications.* When determining whether to identify a nation as having any fishing vessel(s) engaged in PLMR bycatch, NMFS will take into account all relevant matters, including but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

(c) *Effectiveness of comparable measures.* NMFS will also examine whether the nation has implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements. In considering whether a nation has implemented measures that



are comparable in effectiveness to those of the United States, NMFS will evaluate if different conditions exist that could bear on the feasibility and efficacy of such measures to end or reduce bycatch of the pertinent PLMRs.

(d) *Notification of nations identified as having fishing vessels engaged in PLMR bycatch.* Upon identifying a nation whose vessels have been engaged in bycatch of PLMRs in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the High Seas Driftnet Fishing Moratorium Protection Act and this subpart.

(e) *Consultations and negotiations.* Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of encouraging adoption of a regulatory program for protected living marine resources that is comparable in effectiveness to that of the United States, taking into account different

conditions, and establishment of a management plan that assists in the collection of species-specific data;

(2) Seek to enter into bilateral and multilateral treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

(3) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report that result in bycatch of PLMRs and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the protection and conservation of the PLMRs in question to make such agreements consistent with this subpart.

(f) *International cooperation and assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist those nations in qualifying for a positive certification under paragraph (e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and improved bycatch mitigation techniques, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(g) *Procedures to certify nations identified as having fishing vessels engaged in PLMR bycatch.* (1) Each nation that is identified as having fishing vessels engaged in PLMR bycatch shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(i) Such nation has provided evidence documenting its adoption of a regulatory program to end or reduce bycatch of such PLMRs that is comparable in effectiveness to regulatory measures required under U.S. law to address bycatch in the relevant fisheries, taking into account different conditions that could bear on the feasibility and efficacy of these measures, and which, in the case of an

identified nation with fishing vessels engaged in pelagic longline fishing, includes the mandatory use of circle hooks, careful handling and release equipment, training and observer programs; and

(ii) Such nation has established a management plan that will assist in the collection of species-specific data on PLMR bycatch to support international stock assessments and conservation efforts for PLMRs.

(2) Nations will be notified prior to a formal certification determination and will be provided with an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

13. In § 300.204, revise the heading of paragraph (a) and paragraph (a)(1)(i) to read as follows:

**§ 300.204 Identification and certification of nations whose vessels are engaged in shark catch.**

(a) *Procedures to identify nations whose fishing vessels target or incidentally catch sharks in waters beyond any national jurisdiction.* (1) \* \* \*

(i) Whose fishing vessels are engaged, or have been engaged during the three years prior to publication of the

biennial report to Congress, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

\* \* \* \* \*

14. In § 300.205:

a. Revise the section heading, introductory text of paragraph (a), and paragraph (b);

b. Add a heading for paragraph (c); and

c. Revise paragraphs (d) and (e).

The revisions and addition read as follows:

**§ 300.205 Effect of negative certification.**

(a) *Response to negative certification.* If a nation identified under § 300.202(a), § 300.203(a), or § 300.204(a) receives a negative certification under this subpart, the Secretary of the Treasury shall, in accordance with international law:

\* \* \* \* \*

(b) *Trade restrictions.* Upon notification and any recommendations by the Secretary of Commerce to the President that an identified nation has received a negative certification, the President is authorized to direct the Secretary of the Treasury to prohibit the importation of certain fish and fish products from such nation (see § 300.206).

(c) *Consistency of actions.* \* \* \*

(d) *Additional sanctions.* If certain fish and fish products are prohibited from entering the United States, the Secretary of Commerce shall, within six months after the imposition of the prohibition, determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing activity, bycatch, or shark catch described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity, bycatch, or shark catch or that a nation has taken retaliatory action against the United States. This certification is a certification under 22 U.S.C. 1978(a), which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the country so certified for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in 19 U.S.C. 3501(8)) or any relevant multilateral trade agreements (as defined in 19 U.S.C. 3501(4)).

(e) *Duration of negative certification.* Any nation identified in the biennial report to Congress for having vessels engaged in IUU fishing, PLMR bycatch, or shark

catch that is negatively certified will remain negatively certified until the Secretary has determined that the nation has effectively addressed the fishing or regulatory activities for which the nation received a negative certification and issues a positive certification.

\* \* \* \* \*

15. In § 300.206, revise the section heading and paragraphs (a)(1) and (2) and (b)(1) and (4) to read as follows:

**§ 300.206 Denial of port privileges and import restrictions on fish or fish products from negatively certified nations.**

(a) \* \* \*

(1) Vessels from a nation identified in the biennial report under §300.202(a), § 300.203(a), or § 300.204(a) and subsequently negatively certified by the Secretary that enter any place in the United States or the navigable waters of the United States remain subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products, under applicable law. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of *force majeure* or distress.

(2) For nations identified in the previous biennial report under § 300.202(a) that are negatively certified in

the subsequent biennial report, the Secretary shall so notify and make recommendations to the President, who is authorized to direct the Secretary of the Treasury to impose import prohibitions with respect to fish and fish products from those nations. Such a recommendation would address the relevant fishing activities or practices for which such nations were identified in the biennial report. Such import prohibitions, if implemented, would apply to fish and fish products managed under an applicable international fishery agreement. If there is no applicable international fishery agreement, such prohibitions, if implemented, would only apply to fish and fish products caught by vessels engaged in illegal, unreported, or unregulated fishing for which a nation was identified and negatively certified. For nations identified under § 300.203(a) or § 300.204(a) that are negatively certified, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of the Treasury to impose import prohibitions with respect to fish and fish products from those nations; such prohibitions would only apply to fish and fish products caught by the vessels engaged in the relevant activity for which the nation was identified and negatively certified.

\* \* \* \* \*

(b) \* \* \*



(1) *Notification.* Where the Secretary of Commerce makes negative certifications for identified nations, and the President determines that certain fish and fish products from such nations are ineligible for entry into the United States and U.S. territories, the Secretary of Commerce, in cooperation with the Secretaries of Treasury, Homeland Security, and State, will publish a notice to that effect in the *Federal Register*.

\* \* \* \* \*

(4) *Removal of negative certifications and import restrictions.* Upon a determination by the Secretary that an identified nation that was negatively certified has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of this section shall no longer apply. The Secretary of Commerce will issue a positive certification and will, in cooperation with the Secretaries of Treasury, Homeland Security, and State, notify such nations and publish in the *Federal Register* notification of the removal of the import restrictions per the regulations in this part effective on the date of publication.

16. In § 300.207, revise the section heading and paragraphs (a) and (b) to read as follows:

**§ 300.207 Alternative procedures for products not subject to trade restrictions.**

(a) Alternative procedures may be applied to fish or fish products from a harvesting nation that has been negatively certified under § 300.202, § 300.203, or § 300.204 but are not caught by the vessel(s) engaged in the fishing activity for which the nation was negatively certified.

(b) Consistent with paragraph (a) of this section, the Secretary may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that:

(1) The vessel concerned has not engaged in IUU fishing;

(2) The vessel concerned is not identified by an international fishery management organization as participating in IUU fishing or fishing-related activities in support of such fishing;

(3) The fish products were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

(i) Are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fisheries, the regulatory program of an identified nation includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(ii) Include the gathering of species-specific data that can be used to support international and regional assessments and conservation efforts for protected living marine resources; and

(4) The fish products were harvested by fishing activities or practices that do not target or incidentally catch sharks, or were harvested by practices that—

(i) Are comparable to those of the United States, taking into account different conditions; and

(ii) Include the gathering of species-specific shark data that can be used to support international and regional assessments and conservation efforts for sharks.

\* \* \* \* \*

**§§ 300.208 and 300.209[Removed]**

17. Remove §§ 300.208 and 300.209.

**Subpart P—Vessels Known or Reasonably Believed to Have Engaged in Illegal, Unreported, and Unregulated Fishing**

18. The authority for part 300, subpart P, is added to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*, 16 U.S.C. 971 *et seq.*, 16 U.S.C. 1413 *et seq.*, 16 U.S.C. 1826i, 16 U.S.C. 2341 *et seq.*, 16 U.S.C. 5601 *et seq.*, 16 U.S.C. 6901 *et seq.*, 16 U.S.C. 7401 *et seq.*, 16 U.S.C. 7701 *et seq.*, 16 U.S.C. 7801 *et seq.*

19. Revise subpart P heading to read as set forth above.

20. In § 300.300, revise paragraph (a) and add paragraph (c) to read as follows:

**§ 300.300 Purpose and scope.**

(a) This subpart implements internationally-adopted measures pertaining to foreign vessels determined to have engaged in illegal, unreported, and unregulated (IUU) fishing and placed on IUU fishing vessel lists of the:

(1) International Commission for the Conservation of Atlantic Tunas (ICCAT);

(2) Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR);

(3) Northwest Atlantic Fisheries Organization (NAFO);

(4) Western and Central Pacific Fisheries Commission (WCPFC);

(5) Inter-American Tropical Tuna Commission (IATTC);

(6) Parties to the Agreement on the International Dolphin Conservation Program (AIDCP);

(7) North Pacific Fisheries Commission (NPFC);

(8) South Pacific Regional Fishery Management Organization (SPRFMO); and

(9) Any other regional fisheries management organization or arrangement to which the United States is a contracting party or member.

\* \* \* \* \*

(c) In addition to the measures specified in paragraph (a) of this section, this subpart implements

provisions of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (incorporated by reference, see § 300.9), as it pertains to foreign vessel(s) for which there are reasonable grounds to believe that the vessel(s) has engaged in IUU fishing activities or fishing-related activities in support of such fishing.

21. In § 300.301:

- a. Revise the introductory text;
- b. Add, in alphabetical order, definitions for "Fish", "Fishing", and "IUU fishing";
- c. Remove the definition of "Listed IUU Vessel" and add the definition of "Listed IUU vessel" in its place; and
- d. Add, in alphabetical order, the definition of "Vessel".

The revision and additions read as follows:

**§ 300.301 Definitions.**

In addition to the definitions in § 300.2, the terms used in this subpart have the following meaning. If also defined under § 300.2, the terms as defined in this subpart supersede those as defined in § 300.2.

*Fish* means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

*Fishing* means:

- (1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

(5) Fishing does not mean any scientific research activity that is conducted by a scientific research vessel.

*IUU fishing* means any activity set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (incorporated by reference, see § 300.9).

\* \* \* \* \*

*Listed IUU vessel* means a vessel that is included in a list of vessels having engaged in IUU fishing or fishing-related activities in support of IUU fishing that has been adopted by a regional fisheries management organization (RFMO) of which the United States is a member, or a list adopted by an RFMO of which the United States is not a member if the Secretary determines that the criteria used by that organization to create the IUU fishing vessel list is comparable to criteria for identifying IUU fishing vessels and activities that have been adopted by RFMOs to which the United States is a member.

\* \* \* \* \*

Vessel means any vessel, ship of another type, or boat used for, equipped to be used for, or intended to be used for, fishing or fishing-related activities, including support vessels and container vessels that are carrying fish that have not been previously landed.

22. Revise § 300.302 to read as follows:

**§ 300.302 Port entry by foreign vessels.**

(a) The Secretary of Commerce may decide to deny entry to any port or place subject to the jurisdiction of the United States to a foreign vessel listed as an IUU vessel by any regional fishery management organization recognized by the United States.

(b) The Secretary may decide to deny entry to any port or place subject to the jurisdiction of the United States to a foreign vessel that the Secretary has reasonable grounds to believe has:

(1) Engaged in IUU fishing activities or fishing-related activities in support of such fishing; or

(2) Violated any provisions of the Port State Measures Agreement Act of 2015, Pub. L. 114-81, or amendments thereto.

(c) When determining whether a foreign vessel is or has been previously engaged in IUU fishing or fishing-related activities in support of such fishing, the Secretary will take into account, among other things, the

IUU vessel lists and compliance determinations of any regional fishery management organization recognized by the United States.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a foreign vessel may be allowed entry for the purpose of inspection or facilitation of enforcement.

(e) The provisions of paragraphs (a) and (b) of this section to deny entry shall not apply in cases of *force majeure*.

23. Revise § 300.303 to read as follows:

**§ 300.303 Port access by foreign vessels.**

If a foreign, listed IUU vessel, or a foreign vessel for which there are reasonable grounds to believe that the vessel has engaged in IUU fishing or fishing-related activities in support of such fishing, is allowed to enter a port or place subject to the jurisdiction of the United States, the Secretary may, in accordance with the Port State Measures Agreement Act (Pub. L. 114-81) and applicable provisions of conservation and management measures of a regional fishery management organization recognized by the United States, take one or more of the following actions:

(a) Inspect the vessel;

(b) Request that the Secretaries of the Departments in which the U.S. Coast Guard and U.S. Customs and Border



Protection are operating deny the vessel access to port services, including but not limited to refueling, resupplying, or disembarking or embarking of crew; or

(c) Prohibit the vessel from engaging in commercial transactions including, but not limited to, entering, importing, exporting, transshipping, or landing product.

**§ 300.304 [Redesignated as §303.306]**

24. Redesignate § 300.304 as §303.306.

25. Add a new § 300.304 to read as follows:

**§ 300.304 Notice of Arrival requirements.**

(a) Ports to which foreign vessels may request entry pursuant to the on Port State Measures Agreement (incorporated by reference, see § 300.9), include those Customs Ports of Entry listed in 19 CFR 101.3 as well as those specified under any existing international fisheries agreement.

(b) In addition to complying with the Electronic Notice of Arrival/Departure (eNOAD) provisions under 33 CFR 160.206(a), the vessel owner, agent, master, operator, or person in charge of a vessel requesting access to the ports of entry referenced in paragraph (a) of this section must supply the information items listed in Annex A of the Port State Measures Agreement to the National Vessel Movement Center (NVMC) through the eNOAD system.

(c) Vessel owners and operators should protect any personal or otherwise confidential information they gather

in preparing notices for transmittal to the NVMC to prevent unintended disclosure of that information.

26. Add § 300.305 to read as follows:

**§ 300.305 Determinations and notifications.**

For a foreign vessel that is requesting entry to, or that has already entered, a port authorized under § 300.304(a), the Secretary shall provide the following notifications to the vessel master and/or ship's agent and the flag nation of the vessel, and may also provide such notifications as may be appropriate to the nation of which the vessel's master is a national; relevant coastal nations; RFMOs; the Food and Agriculture Organization of the United Nations; and other relevant international organizations:

(a) Notification of the denial or authorization of port entry or use of port services or of the withdrawal of the denial of port services;

(b) The taking of enforcement action under this title or other applicable law; or

(c) The results of any inspection conducted pursuant to this subpart.

27. In newly redesignated § 300.306, revise paragraph (d) and add paragraph (e) to read as follows:

**§ 300.306 Prohibitions.**

\* \* \* \* \*

(d) The prohibitions listed in paragraph (c) of this section shall not apply when the Assistant Administrator has authorized a listed IUU vessel to access such port services or engage in such commercial transactions, in accordance with applicable provisions of RFMO conservation and management measures, including in cases of *force majeure* and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.

(e) It is unlawful for any vessel of the United States, and for the owner or operator of any such vessel, to refuse to cooperate with, or provide requested information to, a port nation in accordance with the Port State Measures Agreement (incorporated by reference, see § 300.9) or with port inspection or port State measures adopted by an RFMO recognized by the United States. For the purposes of this paragraph (e), "vessel of the United States" has the same meaning as in 16 U.S.C. 1802(48).

#### **Subpart R-High Seas Fisheries**

28. The authority for part 300, subpart R, continues to read as follows:

**Authority:** 16 U.S.C. 5501 *et seq.*

29. In § 300.333, revise paragraph (d)(4) to read as follows:

#### **§ 300.333 Vessel permits.**

\* \* \* \* \*

(d) \* \* \*

(4) Except as otherwise provided, permits issued under this subpart are valid from the date of issuance until the date of expiration as indicated on the permit. For a permit to remain valid to its expiration date, the vessel's U.S. Coast Guard documentation or State registration must be kept current. A permit issued under this subpart is void if the vessel owner or the name of the vessel changes; if any other permit or authorization required for the vessel to fish expires, or is revoked or suspended; or, in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

\* \* \* \* \*

30. In § 300.334, revise paragraphs (c) and (f) to read as follows:

**§ 300.334 Fisheries authorized on the high seas.**

\* \* \* \* \*

(c) *Change in authorized fisheries.* If a high seas fishing permit holder elects to change the authorized fisheries specified on the permit, he or she shall notify the Regional Administrator or Office Director who issued the permit of the change(s) and shall obtain the underlying permits for the authorized fisheries prior to engaging in the fishery on the high seas. Per the process under §300.333(d), the Regional Administrator or Office Director

will then issue a revised high seas fishing permit which will expire on the date as indicated on the original permit.

\* \* \* \* \*

(f) *Deletion of a fishery from the authorized fisheries list.* NMFS will delete (*i.e.*, de-authorize) a fishery under paragraph (d) or (e) of this section through publication of a final rule. NMFS will also provide notice to affected permit holders by email and by Registered Mail at the addresses provided to NMFS in the high seas permit application. When a fishery is deleted from the list, any activities on the high seas related to that fishery are prohibited as of the effective date of the final rule. In addition, the high seas permit will be voided unless the permit holder notifies NMFS that he or she elects to change to another authorized high seas fishery or continue in any other authorized fisheries noted on the permit. Once the applicant so notifies NMFS and, if necessary, secures any underlying permits necessary for participation in another authorized high seas fishery, the Regional Administrator or Office Director will then issue a revised high seas fishing permit per the process under §300.333(d). The revised permit will expire on the date as indicated on the original permit.

31. Revise § 300.339 to read as follows:

**§ 300.339 Transshipment on the high seas.**

In addition to any other applicable restrictions on transshipment, including those under this part and part 635 of this title, the following requirements apply to transshipments, when authorized, taking place on the high seas:

(a) The owner or operator of a U.S. vessel receiving or offloading fish on the high seas shall provide a notice by fax or email to the Regional Administrator or the Office Director at least 36 hours prior to any intended transshipment on the high seas with the following information: the vessels offloading and receiving the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment; date and time that transshipment is expected to occur; and species, processed state, and quantities (in metric tons) expected to be transshipped. If another requirement for prior notice applies, the more restrictive requirement (*i.e.*, a requirement for greater advance notice and/or more specific information regarding vessels, location, etc.) must be followed.

(b) U.S. high seas fishing vessels shall report transshipments on the high seas to the Regional Administrator or Office Director within 15 calendar days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office

Director. If there are applicable transshipment reporting requirements in other parts of this title, the more restrictive requirement (e.g., a reporting requirement due in fewer than 15 calendar days) must be followed.

32. Revise § 300.341 to read as follows:

**§ 300.341 Reporting.**

(a) The operator of any vessel permitted under this subpart must accurately maintain on board the vessel a complete record of fishing activities, such as catch, effort, and other data and report high seas catch and effort information to NMFS in a manner consistent with the reporting requirements of the authorized fishery(ies) noted on the high seas permit. Reports must include:

- (1) Identification information for vessel and operator;
- (2) Operator signature;
- (3) Crew size;
- (4) Whether an observer is aboard;
- (5) Target species;
- (6) Gear used;
- (7) Dates, times, locations, and conditions under which fishing was conducted;
- (8) Species and amounts of fish retained and discarded; and
- (9) Details of any interactions with sea turtles, marine mammals, or birds.

(b) The vessel owner and operator are responsible for obtaining and completing the reporting forms from the Regional Administrator or Office Director who issued the permit holder's high seas fishing permit. The completed forms must be submitted to the same Regional Administrator or Office Director or, if directed by NMFS, to a Science Center.

(c) Reports must be submitted within the deadline provided for in the regulations governing the authorized fishery, or within 15 days following the end of a fishing trip, whichever is sooner. Contact information for the Regional Administrators and Science Center Directors can be found on the NMFS website.

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